1944. **K** **File No.** O char-coal Trade 1 ~~44-47~~ 44-47

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Legal Department-

A. **BRANCH**

Subject:— Opinions under the Bombay Charcoal Trade Licensing order 1944

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Government forest contractors can carry on the business of a charcoal producer without a license, although they would be bound by the other provisions of the Bombay Charcoal Trade Licensing Order, 1944; there should be no legal objection to Government imposing by agreements on the forest contractors any conditions irrespective and independently of it provided the agreement does not infringe any other law.

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4/10/44.
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U.R. to F.D., No. 6917; dated the 5th October 1944.

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F.D. (Supply) Order, 32/60318/IV, dated 26-4-1944 prohibits export of charcoal or wood-fuel from any place within the limits of the Kolaba District to any place ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ in India outside the said limits except under and in accordance with a license granted by the Divisional Forest Officer, Kolaba. Power to grant a license includes power to refuse a license. The Divisional Forest Officer who is empowered to grant a license can therefore refuse to grnt license in certain cases without specifying reasons for such refusal; and in exercising that discretion he can be guided by the administrative instructions issued by Government in it s letter F.D.(Supply)No. 32/60318-IV dated 26th April 1944. He should however take care see that those instructions do not form part of his order. It would be safer for him to refuse a license without stating reasons in all cases falling within the ambit of the aforesaid aministrative instructions, and it would then not be necessary to amend the Government Order, No. 32/60318-IV dated 26th April 1944.

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U.R. to F.D. (Supply), No. 7130; dated the 13th September 1944.

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Clause 8 of the Bombay Charcoal Trade Licensing Order, 1944, empowers thelicensing authorityto cancel or suspend at any time for reasons to be recorded, any licenses issued by it. The Order does not specify the grounds on which a license can be suspended or cancelled. But condition 1 of the license in Form E for carrying on the business of a charcoal dealer provides that subject to the provisions of th Bombay Charcoal Trade Licensing Order, 1944, and to the terms and conditions of the license and on payment of a fee of rupees ..... only Mr./Messrs..... ..... is/are hereby authorised to carry on the business of a charcoal dealer from 194...to 194... It is therefore apparent that a license in Form E can be suspended or cancelled only for the breach of any of the provisions of the Bombay Charcoal Trade Licensing Order or of any of the terms and conditions of the license itself. "Reasons" in clause 8 of the Bombay Charcoal Trade Licensing Order obviously relate to the breach of the privisions thereof or of any terms and conditions of the license and not to any extraneous matter such as the breach of any other Order. Ramsing Chhotai who holds charcoal dealer's licenses in Form E has committed no breach of any provisions of the Bombay Charcoal Trade Licensing Order or of any terms and conditions of thelicenses. The fact that he contravened G.N., F.D.(Supply) Notification No. 33(IV)/IV-E dated 19-3-1945 and was found guilty would be no valid ground or suspending his charcoal dealer's licenses. Consequently the order passed by the A.D C.S. suspending Ramsing Chhotai's licenses is not warranted. The licenses will have to be restored without waiting forx the decision of the Bombay High Court in the revision applicationfiled by Ramsing Chhotai against his conviction for the breach

of

of G.N., F.D.,(Supply) Notification No. 36(IV)/IV-R dated 1
19-5-1945.

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U.R. to F.D.(Supply), No. 93, dated the 7th January 1946.

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Under the Bombay Charcoal Trade Licensing Order, 1944, before it was amended in July 1945, only three types of licenses - namely Importer's License, Dealer's Licence and Producer's Licence in Forms D, E and F, respectively could be granted to charcoal merchants, the Dealer's Licenses in form E were granted both to the retail shopkeepers and wholesaler merchants and in some cases such licences viz., licenses in E form for wholesale and retail licences were issued to one and the same person.

When the Order referred to above was amended to 2nd July 1945 by Finance Department(Supply) Notification No.32/IV-D and apart from other changes clauses 6-A and 7(3-A) were added to it.

According to clause 6-A no person other than a charcoal importer or charcoal producer shall in the City of Bombay, the Bombay Suburban District .....
.....
on or after the 1st August 1945 carry on the business of a charcoal wholesaler except under and in accordance with conditions of a valid licence in form G, while according to clause 7(3-A) no charcoal dealer's licence in form E shall be granted to a charcoal importer or a charcoal wholesaler. It appears that in view of these provisions of clauses 6-A and 7(3-A) licenses in form G only were granted to charcoal wholesalers after 1st August 1945.

After clauses 6-A and 7(3-A) were added to the said Order, it seems some of the wholesale merchants got their retail business transferred in the name of their relatives with the permissionof the Licensing Authority, but there are still some merchants whose Dealer's Licenses in form E for carrying on wholesale as well as retail business were continued upto 30th April 1946 and who want these licences to be renewed in order to be able to carry on both wholesale and

retail business.

The question raised for the consideration of the R.L.A. are:-

(1) Has the Licensing Authority any discretion to refuse the renewal of such licences?

(2) Has the Licensing Authority in view of clause 7(3-A) any option to renew existing licences?

But, it appears that the only point that has to be considered is whether in view of the provisions of clause 7(3-A) it is open to the Licensing Authority to renew the wholesaler's licence in favour of a person who also holds a dealer's licence and vice versa.

A charcoal wholesaler as defined by clause 2(iii-A) means a person other than a charcoal producer or charcoal importer, who carries on a business of selling charcoal for the purpose of resale, while a charcoal dealer as defined by clause 2(i) means a person other than a charcoal producer, who holds stocks of charcoal on his own account or in partnership with any other person, and carries on the business of selling charcoal otherwise than for the purpose of re-sale.

Dealer's licences according to clause 5 are granted in form E, while wholesaler's licences according to clause 5-A are granted in form G. In view of the provisions of clause 7(3-A) no charcoal 'dealers' licences in form E can be granted to a charcoal wholesaler. The provisions of clause 7(3-A) are mandatory. There is nothing in the said Order to restrict the scope of clause 7(3-A) to the licences granted for the first time. This clause apparently applies even to the licences which have been renewed or extended upto any particular date after it had come into force. Hence, It appears therefore that in view of the provisions of clause 7(3-A) it is not open to the Licensing Authority to renew the wholesaler's licence in favour of a person who holds a dealer's licence and vice versa.

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U.R. to C.S.D., No. 4574, dated the 17th June 1946.

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The question for R.L.A.'s consideration is whether the District Magistrate can legally fix the price of charcoal under clause 10 of the Bombay Charcoal Trade Licensing Order, 1944, or whether he can do sounder clause (f) of sub-section (2) of section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, if the powers of the Provincial Government are delegated to him under section 8 of the Act.

2. The Bombay Charcoal Trade Licensing Order, 1944, is an Order made under sub-rule (2) of rule 81 of the Defence of India Rules, and since it was in force immediately before the commencement of the Bombay Essential Commodities and Cattle (Control) Act, 1946, it may, by virtue of section 5 read with item 3 of Schedule I to the Act, be deemed to have been validly made under the Act. Consequently, under clause 10 of the Bombay Charcoal Trade Licensing Order, 1944, it would be legally open to the District Magistrate to fix, from time to time, the sale price of charcoal.

3. Section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, provides for new order being made by the Provincial Government, while section 5, is intended to give continuity to the orders made under the Defence of India Rules. As the Bombay Charcoal Trade Licensing Order, 1944, is an order made under the Defence of India Rules and is deemed to have been made under the Act and continued in force under section 5 of the Essential Commodities and Cattle (Control) Act, 1946, section 4 will not apply.

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U.R. to C.S.D., No. 8236, dated the 20th November 1946.

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The view taken in the C.S.D. office note at p. 88 ante is correct.

The power to fix the price of charcoal in areas other than the city of Bombay and the Bombay Suburban District vests in the District Magistrate under clause 10 of the Bombay Charcoal Trade Licensing Order, 1944. The words "all other powers enabling him to do so" in the order issued by the D.M. Surat on 30-9-46 at p. 69 ante are sufficiently wide to include the exercise of his powers under clause 10 of the Bombay Charcoal Trade Licensing Order, 1944. Consequently notwithstanding any reference to rule 81 of the Defence of India Rules that orders of the Bombay D.M. would be deemed to have been ~~thus~~ made under clause 10 of the Bombay Charcoal Trade Licensing Order and it would be competent for the D.M. to amend it. The D.M.'s reference in the order at p. 83 ante to section 5 of the Bombay Essential Commodities and Cattle (Control) Act, 1946 may be treated as a mistake and he may be asked to amend the order by omitting it.

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U.R. to C.S.D., No. 1177, dated the 5th February 47.

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